

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Rasenberger	Team: Squad #7	CCRB Case #: 202104221	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/10/2021 5:30 AM	Location of Incident: § 87(2)(b)		Precinct: 52	18 Mo. SOL 1/10/2023	EO SOL 1/10/2023
Date/Time CV Reported Fri, 07/16/2021 5:50 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 07/16/2021 5:50 PM		

<b>Complainant/Victim</b>	<b>Type</b>	<b>Home Address</b>

<b>Witness(es)</b>	<b>Home Address</b>

<b>Subject Officer(s)</b>	<b>Shield</b>	<b>TaxID</b>	<b>Command</b>
1. POF Tania Mejia	26875	968635	052 PCT

<b>Witness Officer(s)</b>	<b>Shield No</b>	<b>Tax No</b>	<b>Cmd Name</b>
1. POM Travis Mitariten	04525	955203	052 PCT
2. POM James Carroll	09749	964971	052 PCT
3. POF Brittany Sarli	15366	970191	052 PCT
4. POM Justin Larocchia	10656	970653	052 PCT
5. POM Yonathan Bonifacio	06948	946668	052 PCT
6. POM Juan Rivera	02341	961172	052 PCT
7. POF Debra Cotter	16806	943384	052 PCT
8. POM Patrick Jean	24116	970619	052 PCT
9. POM Justin Rivera	04591	958010	052 PCT
10. LT Francisco Sanchez	00000	940939	052 PCT
11. POM Riku Sawai	07086	965859	052 PCT

<b>Officer(s)</b>	<b>Allegation</b>	<b>Investigator Recommendation</b>
A.POF Tania Mejia	Abuse: Police Officer Tania Mejia searched § 87(2)(b)'s property.	

## Case Summary

On July 16<sup>th</sup>, 2021, the CCRB received the following complaint from § 87(2)(b) [BR 1].

On July 10<sup>th</sup>, 2021, at about 5:30 a.m., Police Officers Travis Mitariten, James Carroll, Tania Mejia, Brittany Sarli, and Yonathan Bonifacio of the 52<sup>nd</sup> Precinct responded to a burglary-in-progress call at § 87(2)(b). The tenant of § 87(2)(b) § 87(2)(b) told the officers that she believed someone had broken into her apartment. With § 87(2)(b)'s permission, the officers entered the apartment, where § 87(2)(b) and her daughter were staying. When PO Sarli requested § 87(2)(b)'s identification, § 87(2)(b) said that it was in her purse, and asked to retrieve it. PO Mejia did not allow § 87(2)(b) to do so, and searched through the purse to find § 87(2)(b)'s identification [Allegation A: Abuse of Authority – Search, § 87(2)(g)].

The CCRB is in possession of twelve body-worn camera videos of the incident [BR 2].

## Findings and Recommendations

### Allegation A: Abuse of Authority – Police Officer Tania Mejia searched § 87(2)(b)'s property.

At about 5:30 a.m. on July 10<sup>th</sup>, 2021, numerous officers, including Officers Mitariten, Carroll, Mejia, Sarli, and Bonifacio responded to a 10-31 (burglary-in-progress) call at § 87(2)(b). PO Mitariten spoke with § 87(2)(b) the 911 caller and tenant of § 87(2)(b) in the building lobby. Their conversation is captured between 01:00 and 3:15 in PO Mitariten's body-worn camera video [BR 3]. § 87(2)(b) says that she heard a noise in the apartment as she was opening the apartment door. At 01:07 and at 1:27, PO Mitariten asks § 87(2)(b) whether "under any circumstances" there should be someone inside of the apartment. § 87(2)(b) replies each time that no one should be in the apartment. She says at 01:40 that someone used to stay with her "off and on," but that this person does not have a key and should not be inside of the apartment. At 02:00, § 87(2)(b) tells PO Mitariten that if anyone is inside of the apartment, that person broke in. § 87(2)(b) then gives PO Mitariten the keys to her apartment.

§ 87(2)(b) stated during her CCRB interview [BR 4] that she had been staying in § 87(2)(b)'s apartment since September, 2020 as a sublessee or roommate. She acknowledged that § 87(2)(b) had given her written notice to vacate the apartment, but denied that she had been formally evicted. She entered the apartment through a window on July 9<sup>th</sup> because § 87(2)(b) changed the locks on the door. At 06:52 in her own body-worn camera footage [BR 5], PO Mejia is seen entering the bedroom within § 87(2)(b) where § 87(2)(b) was staying. At 07:30, PO Sarli asks § 87(2)(b) whether she has an ID. § 87(2)(b) says that her ID is in her purse, and asks if she can retrieve it. PO Mejia tells § 87(2)(b) that she cannot. PO Mejia stated that she needed to look at § 87(2)(b)'s identification to establish § 87(2)(b)'s identity and determine whether she had authority or permission to be in the apartment. At 07:37, PO Mejia states "I'll grab it for you." § 87(2)(b) – who is not under arrest -- does not say anything. At 07:46, after PO Mejia has opened the purse, § 87(2)(b) states that her ID is in the pocket of her purse. PO Mejia checks the pocket, and then, without asking for permission from § 87(2)(b) searches through the main compartment of the bag. PO Mejia stated during her CCRB interview [BR 6] that she did not allow § 87(2)(b) to retrieve her ID because of the severity of the job, a burglary-in-progress. PO Mejia has received instructions from multiple supervisors not to allow suspects to grab anything during serious jobs, in case there is a weapon within their reach. PO Mejia testified that her only reason for entering § 87(2)(b)'s purse was to retrieve § 87(2)(b)'s identification. She considered § 87(2)(b) to be

consenting to the search because § 87(2)(b) continually gave instructions as to the location of her ID. PO Mejia denied that she heard § 87(2)(b) state that her identification was in a side pocket of her purse. Officers ultimately determined that § 87(2)(b) and § 87(2)(b) were involved in a housing dispute, a non-criminal matter, and left without making any arrests.

Under Patrol Guide 212.11, officers may engage in protective measures during level 2 (common law) inquiries and Terry stops, even if the officer does not have reasonable suspicion that a person is armed and dangerous. Protective measures include ordering the individual to take her hands out her pockets, put down or step away from an otherwise lawful object that could be used as a weapon, grabbing the person's hands, if the circumstances suggest the person may be grabbing a weapon, or forcibly removing the person's hands from her pockets, if the individual refuses to remove them from her pockets. An officer may not "frisk" (or search) a person's bag unless the officer has reasonable suspicion that the person is armed and dangerous and the bag or item could contain a weapon and is within the person's reach. NYPD Patrol Guide 212.11 [BR 7].

In *People v. Alston*, the facts were as follows. An officer asked Mr. Alston – who was in the hospital -- for his identification card. Mr. Alston told the officer that his identification was in the hospital security office. The officer then went to the security office and opened an envelope containing Mr. Alston's belongings. In suppressing evidence taken from the envelope, the court ruled that Mr. Alston had not given the officer tacit consent to enter the envelope containing his belongings. Even on the (counterfactual) assumption that Mr. Alston did tacitly authorize the officer's retrieval of the envelope, the officer's subsequent actions, in entering the envelope and removing Mr. Alston's belongings, far exceeded the scope of the consent given. *People v. Alston* 122 A.D.3d 934 [BR 8].

In *People v. Richardson*, the court ruled that consent to a search is voluntary when it is a true act of the will, an "unequivocal product of an essentially free and unconstrained choice." *People v. Richardson*, 229 A.D.2d 316 [BR 9].

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party [BR 10].
- PO Mejia has been a member of service for one year and 10 months. This is the first complaint to which she has been a subject.
- The CCRB is in possession of the summary of employment history for PO Mejia [BR 11].

### Mediation, Civil, and Criminal Histories

CCRB Case # 202104221

